

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KEITH ERNST, ARTHUR)
OGANESYAN, and ALAN NAH,)
individually and on behalf)
of all others similarly)
situated,)
)
Plaintiffs,)
)
vs.) No: 2:18-CV-9043 RGK (MRWX)
)
ZOGSPORTS, an unknown)
business entity; and DOES)
1-50, inclusive,)
)
Defendants.)
_____)

DEPOSITION OF MICHAEL MORTELLARO
BEVERLY HILLS, CALIFORNIA
DECEMBER 11, 2018

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Reported by: Vicki Resch, RPR, CSR 6645

1 we'll produce it if it's something that we have.

2 BY MR. YADIDSION:

3 Q Have you looked in --

4 A We don't have a legal entity structure on
5 paper, but I'm happy to talk through it with you.

6 Q Okay. Sure.

7 So what is the legal entity that operates or
8 owns the San Francisco operations?

9 A So there's an LLC for each of those. So the
10 answer to your question is the same for each of those,
11 which is that there is a separate LLC for each of
12 them. So it's ZogSports SF, LLC and then that
13 methodology would carry through for each of the ones
14 that I told you.

15 Q So I believe we've identified -- or you've
16 identified San Francisco, San Jose, Los Angeles,
17 New York, New Jersey, DC, Atlanta and Chicago.

18 A Yes. So each of those are their own legal
19 entity. ZogSports, then the two- or three-letter
20 identifier that I told you, and then LLC would be the
21 name of each legal entity.

22 Q So what's the legal entity for San Francisco?

23 A ZogSports SF, LLC.

24 Q San Jose?

25 A ZogSports SJ, LLC.

1 A ZogSports Holdings, LLC.

2 Q And can you describe what ZogSports is?

3 A Sure. ZogSports, originally, back in 2002,
4 was just a social sports league for young
5 professionals, which is still a core part of our
6 business. I'm going to tell you the whole story
7 because it's going to come out at some point anyway.

8 So our founder started the company after a
9 near-miss on September 11. He was 15 minutes late to
10 work, and as a result, was on the ground looking up
11 when the plane went into the tower that he was working
12 for, Marsh & McLennan. Three hundred people did not
13 make it out that day.

14 He obviously was shocked, spent the next
15 several months thinking about what he wanted to do
16 with his life, what he had done up to that point, what
17 he had done for his career, and decided that he had to
18 do something else.

19 Back then, late 2001, early 2002, he
20 reflected on the things that he loved to do in his
21 life. He loved playing co-ed sports. He had met his
22 wife playing co-ed softball. And he himself cared
23 about giving back to the community and was looking for
24 a new way to do so, finding a way for other people to
25 give back to the community.

1 And so he decided to create ZogSports in 2002
2 with the three pillars of the company as sports,
3 social and charity. The core business was social
4 sports leagues for young professionals. It started in
5 New York. It has grown into seven different markets.

6 The reason behind the company is still the
7 same as it was back then, which is that we believe
8 life is better with real personal actions of caring,
9 community, and a sense of play in your life, and we
10 are looking for ways to do that for people.

11 So it's not just about the sports league,
12 it's about the sports, social and charity. And
13 everything we do is really revolving around those
14 three pillars. And now we're looking for new ways to
15 do that for people. So the ZogCulture business is a
16 way to fulfill that mission in the workplace. And
17 some day, we hope to have other ways that we can do
18 that for people, real personal connections.

19 Practically, when you say what is ZogSports,
20 it's a social sports league for young professionals
21 running a number of different sports. But it's not
22 just the sports league. It's got that mission behind
23 it. It has a happy hour after every game. People
24 play for a charity. We have donated somewhere between
25 \$3 and \$4 million dollars to our customers' charities

1 since we started the company.

2 Q And you mentioned the target demographic is
3 young professionals?

4 A Primarily. Call it 22- to 40-year-olds,
5 young professionals, co-ed. Almost everything we do
6 is co-ed, again, because of the social component.

7 Q And is it intended for participants to have
8 fun?

9 A That's one of the intents. Fun is one of our
10 six core values, trying to make sure that the people
11 who work for the company and the participants have
12 fun. But it's definitely much bigger than just having
13 fun.

14 Q What are the core principles of your company?

15 A Sure. We have six core values that guide the
16 entire company and guide everything we do, every
17 decision we make. They guide the full-time employees
18 and they guide our field team. They are fun, team
19 player, caring, reliable, own it.

20 Q Own it?

21 A Own it, two words.

22 And continuous improvement.

23 Q And what are some of the reasons why someone
24 might join ZogSports?

25 MS. HEALY: Objection. Speculation.

1 play with, but you really feel like you're part of the
2 ZogSports community when you play in our leagues. And
3 we try to do what we can to have you meet people on
4 other teams so that you're really becoming a part of a
5 community. We hear a lot of stories about people who
6 got a job because they met somebody at a happy hour
7 after a ZogSports game.

8 So it's very fulfilling to work there because
9 there are so many different reasons why people play.
10 But I think it all really boils down to that mission,
11 which is real personal connections, a caring community
12 and a sense of play in people's lives.

13 One last thing. Some people play because of
14 the charity aspect, which is -- we call it "Play For
15 Your Cause." Play For Your Cause is a way that people
16 can choose a charity. Each team is asked to choose a
17 charity to play for. So if you were to win your
18 division or come in second place, or in some leagues
19 we have off-the-field awards, you can win money for
20 your charity. And then we donate to the charities of
21 our participant's choice. Certainly not the number
22 one reason why people play, but it's potentially a
23 reason why they play with us.

24 Q Are you aware of anyone who joined ZogSports
25 because they wanted to volunteer as a referee?

1 A I'm not aware of that.

2 Q Do you market to people, potential ZogSports
3 participants, by asking -- by marketing them as
4 potential volunteer referees or asking them to join as
5 volunteer referees?

6 A Not that I'm aware of.

7 MS. HEALY: Objection. Vague.

8 BY MR. YADIDSION:

9 Q Do participants have to pay to join the
10 league?

11 A Yes.

12 Q And, generally, how much is it?

13 A It varies by market, by sport. I want to go
14 into the two different main ways to participate,
15 because there's a difference. The answer is different
16 for each.

17 So there are two different ways that you can
18 register for a ZogSports league. One is what we call
19 a full team. In that case, there is one purchaser who
20 represents the whole team. A purchaser is sometimes
21 referred to as the captain, and that person spends a
22 ballpark between \$800 and \$1,500 for a team. It
23 varies widely based on the market, based on the sport.
24 That's a pretty good range. And that person is
25 raising their hand and saying, I'm in charge of this

1 team. It is then their commitment and responsibility
2 to go out and recruit, depending on the sport,
3 anywhere from seven other people to 19 other people
4 that are going to be on their team.

5 And they are responsible for that team in
6 terms of recruiting, communication, they may work with
7 their team to decide to share that responsibility.
8 But ultimately, we look at them and they look at
9 themselves as the person responsible for the team.

10 They, separate from us, would collect money
11 from the members of their team. And that's something
12 that is between them and their friends on their team.
13 We do ask that they all sign up for our mailing lists
14 so that we can communicate with all of them, but they
15 don't always do that, so we really make sure that we
16 communicate with that captain.

17 That purchaser, slash, captain can also ask
18 another friend to also become a captain. There can be
19 multiple captains on a team that can share this
20 responsibility to recruit to make sure each week that
21 we have the right number of people so that we don't
22 forfeit and so that it is a full team.

23 The second way that somebody can participate
24 is through -- we call it free agent registration.
25 They could come to the same website and see the same

1 league, the same rules on the website, but essentially
2 there's a fork in the road where they can either say,
3 I feel like I have the ability to recruit an entire
4 full team, or I don't, I just moved to town and I
5 don't know anybody and I just want to meet people or
6 play a sport. Or, I have two, three, four, five
7 friends who want to play, but that's not enough for a
8 whole team.

9 So that one person or that group of people
10 sign up as a free agent, anywhere from \$65 to \$150,
11 ballpark. And that person would register, they would
12 have a choice to put in other people who they want to
13 be on their team. They would have a choice of either
14 paying for those people or not paying for those
15 people. Either way, as long as they have told us who
16 they want to play with, we will put them on a team
17 together.

18 Q How many seasons do you have every year?

19 A A minimum, I would say, of four, generally,
20 for each sport. In some cases, we are able to run --
21 like instead of just having one fall season, we may
22 have two fall seasons back to back. So four to six is
23 probably the best guess I could give you.

24 Q I don't want you to guess, but your best
25 answer is four to six, right?

1 A Yes.

2 Q And ZogSports still is operating in
3 San Francisco and Los Angeles?

4 A Yes.

5 Q What about San Jose?

6 A San Jose, we purchased a company that we
7 closed the acquisition in May of 2018. The name of
8 the company was Dynamic Sport & Social, I believe. So
9 that is when we officially started operating in
10 San Jose.

11 Q And you're still operating there?

12 A Yes.

13 Q Do you have volunteer referees in San Jose?

14 MS. HEALY: Objection. Vague.

15 THE WITNESS: We do not have volunteer
16 referees in San Jose.

17 BY MR. YADIDSION:

18 Q Is that because Dynamic Sport & Social did
19 not have volunteer referees?

20 A Dynamic Sport & Social, the company that we
21 acquired that we were not affiliated with, did have
22 volunteer referees when we acquired it.

23 Q And is Dynamic Sport & Social a for-profit
24 company?

25 A Yes. When we purchased it, yes. And keep in

1 mind, we purchased the assets of the company rather
2 than the entity itself.

3 Q I'm sorry. Do you have volunteer referees in
4 San Jose?

5 A Not right now.

6 Q Is there a reason why you don't?

7 A We no longer have volunteer referees.

8 Q At any location?

9 A Correct.

10 Q Why is that?

11 A Let me give you a good answer for this. I
12 want to go back to -- I want to explain why we had
13 them in the first place.

14 Q We'll get to that. Let me --

15 A It's hard for me to answer why we don't have
16 them now without giving a full explanation as to we
17 why we had them in the first place.

18 Q When did you stop having volunteer referees?

19 A When did we stop? It varies by market. In
20 San Francisco and Atlanta, it was approximately two
21 years ago.

22 Q I'm sorry. Atlanta and San Francisco?

23 A Yes.

24 Q What about Los Angeles?

25 A Everywhere else, just to make it easier for

1 Q A volunteer referee. And what do you mean by
2 a volunteer referee?

3 A So the volunteer referee program is really a
4 rule more than a program. It is a rule in our --
5 several of our leagues that asks each team to provide
6 one member of their team to perform volunteer referee
7 duties.

8 Q Okay.

9 A The reality of what we might hope that they
10 would do over the years has been very different and
11 variant based on market, league, and the paid referee
12 who is ultimately in charge of the field that day.

13 They are asked to hold a stopwatch. One of
14 them -- there's two. There are two volunteers. The
15 reality is there might be none, there might be one,
16 and there might be two, because they don't always show
17 up.

18 There's a huge variance on what the knowledge
19 of football would be for any person who volunteers.
20 We might have somebody who shows up who has been
21 playing ZogSports football for many years and knows
22 the rules inside and out. And there might be somebody
23 who, that's their first experience, and they don't
24 know anything about the rules.

25 So that's why I say there's a huge variance

1 on what they actually might be asked to do versus what
2 we might have thought they could do. Ultimately, that
3 is the paid referee's job, is to instruct each of the
4 volunteers what their role would be in that game.
5 Because the paid referee is ultimately accountable and
6 the one who is the referee on the game.

7 So each of them are given a stopwatch. One
8 of them would be keeping the play clock, we call it,
9 which is to ensure that -- I think it's every
10 25 seconds a new play happens or 25 seconds between
11 plays. And the other would be keeping the game clock.
12 Now, again, it might vary greatly depending on their
13 knowledge.

14 In my experience, I have played in the
15 leagues and I've been a volunteer myself many times.
16 There were really only three things that I was doing.
17 One was the clock, two was keeping an eye on the
18 out-of-bounds line near me to see if somebody stepped
19 over or in front of it, so if they were in or out of
20 bounds.

21 And third was if there was a play right in
22 front of me that was not right in front of the paid
23 referee, was the person touched with two hands, one
24 hand or no hands. But the referee was ultimately --
25 the paid referee was ultimately the one who would make

1 all of the decisions with perhaps a little bit of help
2 from the volunteers.

3 Now, that could, like I said, vary greatly
4 depending on the knowledge of the volunteers
5 themselves. But our expectation was that they would
6 do those three things.

7 There could be a volunteer who would try to
8 do more, and that would be up to the paid referee to
9 make the decision of whether or not they would defer
10 to a volunteer to make any other calls. But
11 ultimately, that was the paid referee's job and
12 ultimate decision to make every call. They're really
13 an extra set of eyes to assist the community that's
14 playing there that day.

15 I want to take it back to 2002 and talk about
16 why we have the volunteer referee rule in the first
17 place. Two reasons. One is -- I know it's a question
18 that you plan on asking, and two, I think it's very
19 relevant to what their responsibilities are.

20 Q So why did you -- we'll get into that later
21 unless --

22 A Let's just do it now --

23 Q Actually, I'll get to it later.

24 A -- because it's --

25 Q There's no question.

1 A -- very relevant to what the responsibilities
2 are, so I'd like to talk about why we started the
3 program.

4 Q We'll get into that in a little bit. I just
5 wanted to get a --

6 A I will add that many games do not have a
7 volunteer because they don't show up. We don't have
8 any record of that, so I can't tell you how many games
9 did or did not have a volunteer. I can just say that
10 as a participant and as a coach of all the general
11 managers, I'm aware of the fact that many times they
12 did not show up. We do have a penalty in our rules
13 for not showing up that is sporadically enforced.

14 So the paid referee is ultimately the one
15 who's responsible for the game and can manage a game
16 without any volunteers, which is, when I said earlier
17 today that we don't need volunteers, that's a part of
18 the reason why, because we have had many times where a
19 paid referee has managed a game themselves.

20 And secondly, right now, we don't have any
21 volunteers, and the leagues are running just fine with
22 just the paid referee.

23 Q Okay. So ZogSports uses referees, rights?

24 A ZogSports uses a paid referee on every game.

25 Q And why does ZogSports use referees?

1 A We would coach them to do a better job.

2 Q So you want them to make the right calls,
3 right?

4 MS. HEALY: Objection. Asked and answered.

5 THE WITNESS: I've already answered.

6 BY MR. YADIDSION:

7 Q You can answer it again.

8 A Yes.

9 Q And you classified some of these employees --
10 excuse me -- some of these referees as employees,
11 right?

12 MS. HEALY: Objection. Argumentative.

13 THE WITNESS: The paid referees are
14 employees. The volunteers are not.

15 BY MR. YADIDSION:

16 Q And did ZogSports also require participants
17 to volunteer as referees?

18 A No.

19 Q What do you mean by that?

20 A ZogSports has never required any individual
21 to do anything regarding volunteering. ZogSports asks
22 the team to provide one volunteer. It is now up to
23 that team to decide who that individual is, so we do
24 not require any individual to volunteer.

25 Q And ZogSports did not compensate these

1 AFTERNOON SESSION

2

3 (Whereupon, at the hour of 1:26 p.m., the
4 proceedings resumed at the same location,
5 with the same parties in attendance.)

6

7 EXAMINATION (Resumed)

8 BY MR. YADIDSION:

9 Q We're back on the record.

10 I'd like to remind you that you are still
11 under oath.

12 You understand that?

13 A Yes, sir.

14 Q So did ZogSports require participants to
15 volunteer as referees?

16 A No. ZogSports put a schedule out for when
17 people are to play their games. Part of that schedule
18 for some of our leagues where we have volunteer
19 referees in the rules was to stay for each game which
20 team was responsible for providing a volunteer
21 referee.

22 Q Did your rules state that volunteer referees
23 are required?

24 MS. HEALY: Objection. Vague.

25 THE WITNESS: Our rules state that each team

1 is to provide a volunteer referee, and if they don't,
2 that there would be a penalty for their team.

3 BY MR. YADIDSION:

4 Q And did it say that it's required? Did you
5 use the word "required"?

6 A I would have to actually look at the rules.
7 I'd be happy to -- we provided them. I do not know if
8 the word "required" is in there.

9 One thing that I want to say is that -- you
10 asked me before if the volunteer referees were
11 enforcing the rules, and I said no. And the answer is
12 no, but I want to make sure I explain it since we went
13 to break.

14 Q So I'll ask you --

15 A Yes, ask me the question again.

16 Q -- are volunteer referees enforcing the game
17 rules?

18 A No. The paid referee is 100 percent
19 responsible for enforcing the game rules. The reason
20 that we cannot have the volunteer referees enforce the
21 game rules is that many of them don't even know the
22 rules. They certainly don't know all the rules. They
23 can be a separate set of eyes and ears on the field,
24 but it is 100 percent the responsibility of the paid
25 referee to enforce the game rules.

1 And in the cases where we have eliminated the
2 rule for volunteer referees, nothing changes for the
3 paid ref except they don't have that second set of
4 eyes.

5 Q Do volunteer referees assist the paid
6 referees in enforcing the game rules?

7 MS. HEALY: Objection: Speculation.

8 THE WITNESS: I think I already answered the
9 question.

10 BY MR. YADIDSION:

11 Q You can answer it.

12 A The paid referee is responsible for -- is
13 100 percent responsible for enforcing the game rules.
14 The volunteer referees are an extra set of eyes, not
15 to enforce the rules, but to help with primarily two
16 to three things out of probably -- we'd have to look
17 at the rules. There's probably a hundred things that
18 the paid referee is responsible for. We ask for
19 assistance with the clock, out of bounds, and touch
20 versus no touch.

21 Q So would it be accurate to state that the
22 volunteer referees were assisting the paid referees in
23 enforcing the game rules?

24 A I've already answered the question.

25 Q Is that a yes or no?

1 team. That is a commitment they have made.

2 So again, the captain has a commitment to
3 recruit their team. They have to spend time on that.
4 They have to spend time on that in their free time
5 recruiting their team. The team has a commitment, and
6 each member of that team has a commitment as a team to
7 the league, to the community that they have signed up
8 for, to show up for their games so that they don't let
9 that community down.

10 All of that is similar to the volunteer
11 referee commitment. It is no different. We are
12 asking them as a member of the community to show up
13 for their community. And there is no, ever
14 expectation that for all of those, as you call them,
15 duties, that anybody will be paid. Nobody thinks
16 they're going to get paid. Nobody has an expectation
17 that they're going to get paid for all these
18 commitments that are made.

19 The volunteer referee is, in fact, a lighter
20 commitment than forfeiting. So, for example, if your
21 team does not show up for a game, the penalties are in
22 the rules. They are harsher for forfeiting than they
23 are for your team not providing a volunteer referee.

24 We are not talking about whether or not --
25 showing up to play in your game, whether or not that

1 was an employer-employee relationship between us and
2 whether or not we should have been paying them,
3 because that would be absolutely ridiculous. It's
4 just as ridiculous to say that somebody who signed up
5 for a commitment to be a -- to play in a league where
6 they are asked to volunteer, their team is asked to
7 volunteer, just like they're asked to show up, just
8 like they're asked to recruit, it's something that you
9 have signed up for. And you never had any
10 expectation, and no reasonable person had any
11 expectation, and we have no feedback over the years,
12 including from you in your first, second, third,
13 fourth, fifth, sixth, seventh or eighth or ninth or
14 tenth season that you played and that you probably
15 were a volunteer referee, we never heard, where's my
16 pay, because there was never any expectation of a
17 volunteer being an employee of the company.

18 That is my long explanation. I apologize for
19 getting fired up. I'm sorry about that. But this is
20 very emotional for me because it is so against what
21 the community is all about. And people are there to
22 help each other.

23 I'm going to go back to 2002.

24 Q Wait. Are you talking about something else?

25 A I'm talking -- can you restate the question

1 San Francisco and Atlanta two years ago. That's what
2 we decided we do across the board now. And that's
3 ideal for a number of reasons.

4 Q To avoid lawsuits?

5 MS. HEALY: Objection. Argumentative. I'm
6 going to instruct him not to answer that.

7 BY MR. YADIDSION:

8 Q So why is it -- was it ideal before this
9 lawsuit?

10 A So the reason why we have the volunteer
11 referees in the first place is, I think, the answer to
12 how things have changed.

13 So back in 2002, we talked about Rob's
14 near-miss on September 11, looking for a way to give
15 back to the community. He was afraid that what people
16 were feeling in New York at the time was not going to
17 last. People were looking for a way to give back.
18 People were looking for a way to give back to the
19 firefighters, to the police officers, the families.
20 They were looking for a way -- like never had happened
21 before, they were looking for a way to come together.
22 And Rob was afraid that that wouldn't last.

23 So he thought that ZogSports would be a way
24 for that to last both by creating a community and by
25 giving people a way to give back to charity and giving

1 people a sustainable way to do something they love
2 doing and give back to charity at the same time.

3 So he started to start ZogSports. He told
4 all of his friends. He --

5 Q I'm sorry to interrupt, but I'm just asking
6 about the volunteer referees.

7 A I'll get there.

8 He --

9 Q I don't need to know about the history --

10 A You don't care, I guess.

11 Q That wasn't my question?

12 A I'm going to get there.

13 So he told all his friends, did some
14 networking and was expecting probably 30 people to
15 show up on that first day of football.

16 And he got out to the field and he, A, didn't
17 have time, nor did he really even think to hire a paid
18 referee the way that I just described it. That's all
19 evolved.

20 But back then, that first day, he was just
21 looking for a way to bring the community together. So
22 he showed up at the field expecting 30 people to show
23 up. He didn't have an online system, so it was all
24 just networking.

25 So that day, 500 people show up to support

1 New York, to support him, to support his cause. There
2 were 500 people on the field that day, and that was
3 the start of the ZogSports community. And they all
4 looked around and they said, what are we going to do?
5 There's 500 people here. How are we going to play
6 football? We don't have any referees. And they all
7 said, wow, we'll help the community.

8 And that's where the volunteer referee
9 program started, by people wanting to help their
10 community after September 11. And that was the spirit
11 of it. It was a community. It was a social thing for
12 them to help each other and help their community. And
13 that's the way I just described it to you, which is
14 that there is a commitment to your league and a
15 commitment to your community. And it was nothing else
16 other than that from the start until now. And that's
17 what you're attacking.

18 Q Are you done?

19 A No.

20 Q Go ahead.

21 A So back then it was about a community coming
22 together and helping each other. And that was always
23 our hope, is that that's the way the volunteer referee
24 rule would continue, and it became less important over
25 the years. We had people who didn't know the rules.

1 And I would say a very large portion of the volunteers
2 don't know the rules. People wouldn't show up for
3 their volunteer responsibilities, and we didn't keep
4 track of it. We didn't even penalize. We stopped
5 penalizing for most of our leagues.

6 And so it wasn't something we needed. We had
7 no financial benefit to having it. We can have a game
8 refereed with one referee, which we've proven before
9 we eliminated it and after we eliminated the rule.
10 And so that's the answer to the question of why we
11 don't have them, is because back in the day, there was
12 a very specific social reason why it existed, to help
13 the community. That we have seen dissipate. It was
14 very much nice to have, but certainly not necessary.
15 And rather than fight with you about it, we could
16 either have kept it going and said, believe us, we
17 don't need it, or we could stop it and say, look, we
18 don't need it, which we don't. The proof is we don't
19 have it anymore. And it's not because of the lawsuit
20 because we had it stopped two years ago in Atlanta.
21 We had it stopped two years ago in San Francisco. Our
22 football sales have been going down every year, so
23 we've been -- and that's a macro effect because we
24 actually talked to our competitors in all different
25 cities, and football has been going down.

1 many people could have volunteered.

2 BY MR. YADIDSION:

3 Q And ZogSports never recorded the hours
4 volunteered by volunteer referees, right?

5 MS. HEALY: Objection to the extent that that
6 calls for a legal conclusion or expert opinion. He
7 can testify as to his understanding.

8 THE WITNESS: Can you please repeat the
9 question?

10 MR. YADIDSION: Can you read it back?
11 (Record read.)

12 THE WITNESS: ZogSports doesn't have any way
13 to know who volunteered.

14 BY MR. YADIDSION:

15 Q So ZogSports never recorded it?

16 A Correct.

17 Q And that's throughout California?

18 A Correct.

19 Q And that's throughout the United States?

20 A To my knowledge, yes.

21 Q And ZogSports has never maintained records of
22 hours worked by any of the volunteer referees, right?

23 MS. HEALY: Objection. That's argumentative.
24 It assumes facts not in evidence, and it contains
25 legal conclusions that are highly disputed in this

1 wage document --

2 Q That's a fair point.

3 So ZogSports never issued wage statements to
4 any volunteer referees for volunteering as referees,
5 right?

6 A Correct.

7 Q And that's throughout California?

8 A Correct.

9 Q And that's throughout the United States?

10 A Correct.

11 Q Does ZogSports maintain records of all
12 individuals who have registered for or participated in
13 its sports or activities?

14 A Registered for, yes. Participated in, no,
15 because oftentimes somebody may show up who is not
16 registered.

17 Q Has ZogSports maintained records of all
18 individuals who have registered for its sports or
19 activities since 2014?

20 A I just want to explain it with a couple
21 sentences because --

22 MS. HEALY: Go ahead.

23 THE WITNESS: The general answer is yes. But
24 for the paid teams, it's up to the captain to put
25 their roster in. So that's not technically

1 registering. And they may or may not fill out their
2 roster fully.

3 So what we have are the records of the people
4 who have paid, plus the people who have paid for a
5 full team, whatever they said their roster was. They
6 have up to two weeks after the start of the season to
7 change it. So on the full teams, our record of who
8 registered is not complete.

9 BY MR. YADIDSION:

10 Q Okay. So what type of information does the
11 captain need to provide for each of the individuals on
12 the roster?

13 A Just name and email address.

14 Q What about physical home address?

15 A The captain does not do that.

16 Q Do the participants do that at any point?

17 A They are asked to. We would like them to,
18 but we don't require it.

19 Q What about phone number?

20 A Same.

21 MS. HEALY: Is now a good time to take a
22 break?

23 MR. YADIDSION: If you'd like to, sure.
24 We'll go off the record.

25 (Recess.)

1 BY MR. YADIDSION:

2 Q I just want to go back to what we were
3 discussing earlier.

4 So does ZogSports maintain a record of all
5 individuals who have registered for sports or
6 activities?

7 A I think I answered it already, which is we
8 have a record of everyone who paid, which is all --
9 almost all of the free agents and the purchasers of
10 the teams, but we have little control over how they
11 fill out their roster. We ask them to fill it out.
12 We don't require it.

13 So we have some teams that have just one
14 person on them and we have some in the complete
15 opposite direction, which is like a company who puts
16 50 people on their roster. So the blanket statement
17 that we have a record for everyone who registered is
18 hopefully clarified by that explanation.

19 The general answer is yes, but we don't have
20 a record of everyone who played because of the fact
21 that the rosters are controlled by the purchaser, and
22 that's like 80 percent of our participants are on
23 those full teams.

24 Q So to summarize, you have a record -- you
25 don't necessarily have records of everyone who

1 actually have all that other information.

2 BY MR. YADIDSION:

3 Q Do these records indicate which sports or
4 activities they participated in?

5 A It's a different record. So there's the kind
6 of account information, which is what we just talked
7 about. And then there's like the registration
8 information, which is -- which connects each account
9 to the league that they have signed up for. And each
10 league is associated with a sport.

11 Does that make sense?

12 Q Right. So you could connect those databases?

13 A Yes.

14 Q And you previously identified which sports or
15 activities have volunteer referees, right?

16 A Yes. And we provided that to you.

17 Q And these records indicate the locations
18 where they participated or registered?

19 MS. HEALY: Objection. Vague.

20 THE WITNESS: I think it's in the records we
21 gave you. If it's not -- I think we have a column in
22 the records we gave you.

23 BY MR. YADIDSION:

24 Q So to the best of your recollection, the
25 records indicate where participants have registered,

1 right?

2 A Yeah.

3 Q So using these records, would you be able to
4 compile lists which include the names and last known
5 contact information of all ZogSports participants
6 throughout the United States since September 2014?

7 A For -- specifically for leagues where there
8 were volunteers?

9 Q My question is more general. For all
10 ZogSports participants.

11 A Yes.

12 Q And based on ZogSports records, could you
13 also identify all individuals who have potentially
14 volunteered as a referee?

15 A No.

16 MS. HEALY: Objection. Speculation.

17 BY MR. YADIDSION:

18 Q Why not?

19 MS. HEALY: Asked and answered. He already
20 answered.

21 THE WITNESS: I think there are two reasons.

22 I'm sorry. Please restate the question.

23 BY MR. YADIDSION:

24 Q Sure. So based on ZogSports' records, could
25 you identify all individuals who could have

1 potentially volunteered as a referee?

2 A There is nothing -- we don't have a report
3 right now that can do that.

4 Q Right. But would you be able to generate
5 that type of work?

6 A Not without IT support. There is data that
7 could be connected, but we don't have that data right
8 now. So the answer is no. But could we, the answer
9 is yes.

10 Q So without proper IT support, you could
11 compile that list, right?

12 A We could compile the list of all the people
13 who played in leagues where, in the rules, there was a
14 volunteer referee request.

15 Q And is that since September 2014?

16 A Yes.

17 Q And the list includes the last known contact
18 information to the extent it is reported, right?

19 A To the extent it is reported, with the caveat
20 that for the roster members may not have anything more
21 than email address and name.

22 Q And is this throughout the United States?

23 A Yes.

24 Q And ZogSports does not keep any records of
25 when volunteer referees work, right?

1 MS. HEALY: Objection. Argumentative. Also,
2 there's a legal conclusion in there.

3 MR. YADIDSION: Is there?

4 MS. HEALY: There is.

5 THE WITNESS: Yeah, if you could try to
6 restate it without the word "work," because I don't
7 agree that they worked.

8 BY MR. YADIDSION:

9 Q Okay. So does ZogSports -- let me rephrase
10 that.

11 ZogSports does not keep any records of when
12 volunteer referees volunteered, right?

13 A Correct.

14 Q And that's been the policy and practice since
15 September 2014, right?

16 MS. HEALY: Objection. Asked and answered.

17 THE WITNESS: To my knowledge, yes.

18 BY MR. YADIDSION:

19 Q And that's been the policy and practice in
20 California?

21 A To my knowledge, yes.

22 Q Throughout the United States?

23 A Yes. And I just want to say that when I say
24 to my knowledge, it's because like I have said for
25 anything, there's a chance that somebody could have

1 THE WITNESS: That's a -- that's a good
2 point. The math that I gave you was the number of
3 times somebody has played, not necessarily the number
4 of people.

5 BY MR. YADIDSION:

6 Q Okay. So let's talk about the unique
7 individuals.

8 A Unique individuals, I don't have the data.
9 We don't have any reports based on that.

10 Q So how many times does someone in California
11 since September 2014 play or participate in ZogSports?

12 A We don't have that data. It could be
13 somebody like you who played every season for two and
14 a half years, 11 straight times, or it could be
15 someone who only showed up once. We don't have that
16 data.

17 Q You don't know --

18 A No.

19 Q -- how many times, on average, someone
20 participated in ZogSports?

21 A No.

22 Q You don't keep track of that data?

23 A Our system doesn't have that data.

24 Q What is your best estimate?

25 MS. HEALY: Objection. Speculation.

1 clock, right?

2 A Yes.

3 Q And when the play clock has 10 seconds
4 remaining, referee number two needs to yell out
5 10 seconds. When the clock has five seconds
6 remaining, he/she needs to yell out the final
7 five-second countdown.

8 Is this the policy and practice of ZogSports?

9 A It was the hope. I think the reality was
10 that it happened sporadically. I think back in the
11 day, it happened pretty consistently.

12 Q And this was the rule or recommendation since
13 September 2014, right?

14 A It wasn't the rule. The rule is that you
15 just need to provide a volunteer referee. This is an
16 instruction to the paid referee for how to best
17 leverage the volunteer referee's support for them to
18 be able -- for the paid referee to be able to do their
19 job.

20 Q What about calling touchdown, did the
21 volunteer referee do that?

22 MS. HEALY: Objection. Speculation.

23 THE WITNESS: The paid referee calls
24 touchdowns almost always unless they don't see it,
25 which is rare. And if they don't see it, they can ask

1 a volunteer referee for help.

2 I think my statement would be that the paid
3 referee is the one who generally calls touchdowns
4 because they can be very controversial, and you would
5 want the ambassador of the company being the one
6 deciding if a touchdown has happened or not.

7 BY MR. YADIDSION:

8 Q And the volunteer referee assists the paid
9 referee in doing that?

10 A If the paid referee asks for -- for
11 assistance, but not by default.

12 Q What about making all calls five to 15 yards
13 downfield, for example, completed passes, in/out of
14 bounds, two-hand touch, et cetera, and calling
15 penalties, for example, delay of game, pass
16 interference, picks, blocking, et cetera.

17 Did volunteer referees do that?

18 MS. HEALY: Objection. Speculation.

19 THE WITNESS: Generally, not all of it. So
20 generally, which I think the best thing I can tell
21 you, is what I know happens out there. It's clock,
22 inbounds/out of bounds, two-hand touch. The rest of
23 the stuff was a wish list that was not in reality
24 happening.

25 ///

1 authority on the field who could decide when to start
2 and stop that clock.

3 BY MR. YADIDSION:

4 Q And that's been applicable since
5 September 2014?

6 A Yes.

7 Q What about making sure you know the clock
8 rules.

9 Who does that refer to?

10 A That would be our hope that a volunteer
11 referee would know the clock rules.

12 My best guess would be that almost none of
13 them actually know the clock rules. So it ultimately,
14 it lands on the paid referee to know the clock rules
15 and just tell the volunteer when to click start and
16 stop on the stopwatch.

17 Q And that practice has been in effect since
18 September 2014?

19 A Yeah. So in practice, as documented here, it
20 was a hope. The reality since September 2014 was that
21 the paid referee was the one telling the volunteer
22 when to start and stop the clock.

23 Q What about timeouts?

24 MS. HEALY: Objection. Vague.

25 ///

1 BY MR. YADIDSION:

2 Q It says here two timeouts?

3 A Yes. So the same answer, which is that the
4 paid referee is the one who primarily would be
5 responsible for timeouts. In fact, he is responsible
6 for timeouts. Even though this document is asking the
7 volunteer referee to be responsible for timeouts, the
8 paid referee is actually the one responsible for
9 timeouts.

10 Q What about updating the scoreboard?

11 A I don't know. I don't know what's -- in this
12 document, it says that the volunteer referee is
13 responsible for that. I don't know what the practical
14 reality is.

15 Q What about making all calls downfield, for
16 example, completed passes, in and out of bounds,
17 two-hand touch, et cetera, and calling penalties, for
18 example, delay of game, pass interference, picks,
19 blocking, et cetera?

20 A Yes. So my answer for that is the same as --
21 as up above. It says almost the exact same thing for
22 referee two.

23 And the answer is that there were really
24 three things we were seeing the volunteers do, which
25 is the clock, inbounds versus out of bounds and

1 flagpoles and two-hand touch. Not the rest of this
2 list, which was at one point a hope.

3 In fact, when I coach people, I've told them
4 you actually don't want your volunteers making
5 controversial callings, like pass interference. It
6 has to be a head referee who's paid by the company
7 who's making a call like that.

8 Q It says here, use your volunteers. Make sure
9 the referees are positioned correctly, and let them
10 know what calls to look for on the field.

11 Were paid referees required to instruct
12 volunteer referees to do that?

13 A "Required" is not the right word. They were
14 certainly asked to use their volunteers and asked to
15 gather the referees before the game and explain how
16 they can help.

17 The reality is, I would say, anywhere from a
18 0- to 10-second explanation of what they were to do,
19 and then the game started.

20 Q Is there anywhere in the record or any
21 documents that show that they did spend only about
22 10 seconds --

23 A No. Just like there's no record that there
24 was a volunteer at any given game.

25 Q So you're basing this on your anecdotal

1 a call and perhaps asking for help from a volunteer if
2 they didn't see something.

3 Q And that's been the policy and practice since
4 September 2014?

5 A Yes.

6 Q Okay. You can put that away.

7 What's ZogSports' policy or practice when
8 there are no volunteer referees to referee a game?

9 MS. HEALY: Objection. Asked and answered
10 many times.

11 THE WITNESS: Play the game without any
12 volunteer referees would be the general rule.

13 BY MR. YADIDSION:

14 Q And generally, are there penalties assessed?

15 MS. HEALY: Again, objection. Asked and
16 answered.

17 THE WITNESS: The rules state that there
18 would be penalties assessed. And I would say
19 sporadically they are, depending on the discretion of
20 the referee to decide it.

21 BY MR. YADIDSION:

22 Q Does it hurt the efficiency if there are no
23 volunteer referees?

24 MS. HEALY: Objection. Asked and answered.

25 We did all of this before lunch. Why are we circling

1 back to it?

2 I'm going to allow this to go on for a little
3 bit longer, and then I'm going to start instructing
4 him not to answer, because when we've heard the same
5 question and answer four times in the same manner,
6 there's no need to keep doing it other than to harass
7 and badger the witness.

8 MR. YADIDSION: No, I didn't ask that
9 question.

10 BY MR. YADIDSION:

11 Q Please answer the question.

12 A Can you please --

13 Q Sure. Does it hurt the efficiency of the
14 game not to have a volunteer referee?

15 A That would be an opinion.

16 Q I would like your opinion, please.

17 A No.

18 Q Why is that?

19 A Back in 2002, the answer might be yes. But
20 in the last four years, the volunteer referee usage
21 has been sporadic at best. Most of them don't know
22 the rules. Many of them are daydreaming. And so to
23 not have volunteer referees in most of our leagues,
24 and again, there are exceptions. Sometimes volunteers
25 are terrific. But in general, it has not been very

1 helpful to have them. So the efficiency is not better
2 with them or worse without them.

3 I do have to take a bathroom break soon.

4 Q I appreciate that.

5 Could ZogSports have hired more paid referees
6 instead of having volunteer referees?

7 MS. HEALY: Objection. Speculation. Vague.
8 Asked and answered.

9 THE WITNESS: We didn't and haven't.
10 BY MR. YADIDSION:

11 Q So to have an extra set of eyes on the game,
12 could it have hired additional paid referees?

13 MS. HEALY: Objection. Speculation. Asked
14 and answered.

15 THE WITNESS: I mean, I think the answer that
16 is more specific is we didn't, and we have not done
17 that.

18 BY MR. YADIDSION:

19 Q Is there a reason why you have not hired
20 additional paid referees for each game?

21 MS. HEALY: Objection. Asked and answered.
22 Speculative.

23 THE WITNESS: Because we feel that one paid
24 referee is enough. And the volunteers, as I've
25 explained, it wasn't just about them being on the

1 field. It was a much broader reason why that program
2 originally started. There's no comparison between a
3 paid referee and a volunteer referee, both in the
4 responsibilities and in the spirit of why one is there
5 and the other is there. So no.

6 BY MR. YADIDSION:

7 Q Do you believe a paid referee is capable of
8 competently keeping track of the game clock, the play
9 clock and keeping track of the game?

10 MS. HEALY: Objection. Asked and answered.

11 THE WITNESS: My answer is that it doesn't
12 matter what I believe. It's happening.

13 BY MR. YADIDSION:

14 Q Now, it's happening?

15 A It's happening.

16 Q Does ZogSports have any competitors?

17 A Yes.

18 Q Who are they?

19 A There are hundreds.

20 MS. HEALY: Is there a topic that he's
21 designated on talking about his competitors? I'm
22 pretty sure there is not.

23 THE WITNESS: I do have to use the bathroom.

24 MR. YADIDSION: Okay. Let's take a quick
25 break.

1 Q And has that been the policy and practice
2 since September 2014 at all locations?

3 A Yes.

4 Q And what about under, no referee penalties,
5 it describes here the consequences for not having
6 referees. It says, teams failing to provide a referee
7 will incur the following penalties per referee that is
8 supposed to be provided. First time, team will start
9 next game down 9-0 per volunteer referee.

10 Second time, team automatically gets a loss
11 added to their record. Third time, team is removed
12 from playoffs. Playoffs. Team will start their game
13 down 14-0 per volunteer referee.

14 Is that -- does that accurately describe the
15 policies and practices of ZogSports since September
16 2014 at all locations?

17 A Yes.

18 Q Below that it says, if ref arrives more than
19 10 minutes after game time, team starts next game down
20 3-0. If ref arrives after first half completes, team
21 starts next game down 6-0.

22 Does that accurately describe ZogSports'
23 policies and practices since September 2014 throughout
24 all locations in the United States?

25 A I would say in general, yes.

1 Q I just want to be clear.

2 MS. HEALY: You're both talking at the same
3 time.

4 THE WITNESS: Sorry. I can --

5 MS. HEALY: You already answered. That's
6 fine. If you don't know, you don't know.

7 THE WITNESS: Yeah, I don't know.

8 MR. YADIDSION: We'll move on to Exhibit 14.

9 (Exhibit 14 was marked for identification.)

10 MR. YADIDSION: This has been Bates stamped
11 Zog 1.

12 BY MR. YADIDSION:

13 Q Can you explain what Exhibit 14 is?

14 A I believe I know what it is just by looking
15 at it, but I would want to know what the label was on
16 the file when I submitted it, just to make sure.

17 I believe it is a volunteer referee penalty
18 report, but I'd like to verify that. Is there a way
19 to just verify that that is what I -- what we called
20 it when we submitted it?

21 MR. YADIDSION: You want to go off the
22 record?

23 MS. HEALY: No, just give me a second.

24 That is correct.

25 THE WITNESS: All right. So I mentioned

1 earlier that our referees, when we code them as a
2 referee in the system and they get access to our
3 system, would be able to enter scores. They also can
4 enter if there was an injury during the game. They
5 can also enter if there was an incident during the
6 game.

7 Another thing that they can enter is called a
8 volunteer ref penalty, that is incredibly sporadically
9 used. For example, when I ran the report for DC,
10 there were no entries in it for the last three years.
11 I think we can all agree that there was at least one
12 time in the last three years where somebody did not
13 show up as a volunteer.

14 And so in theory, the way that the system was
15 designed, was that every single time that happened,
16 the referee would go enter it in the system. The
17 reality is, they didn't do it. We didn't really ask
18 them to do it. Some people would probably just see
19 that it was an option.

20 So it's evidence that the volunteer referee
21 penalties were not documented very well. We gave you
22 what we had.

23 BY MR. YADIDSION:

24 Q Did you instruct them to document the
25 penalties at some point?